

ATTACHMENT NO. 3

EXHIBIT 11.2.2

ZUNI TRIBE WATER QUALITY AND INTERFERENCE WITH TRUST RESPONSIBILITY WAIVER AND RELEASE OF CLAIMS AGAINST THE STATE AND OTHER PARTIES

1. Except as provided in paragraphs 2, 3 and 4, the Zuni Indian Tribe on behalf of itself and its members (collectively, "Zuni Tribe"), in consideration of the benefits realized under the Zuni Indian Tribe Water Rights Settlement Agreement in the Little Colorado River Basin, dated June 7, 2002 ("Settlement Agreement"), and in accordance with the commitments under paragraph 11.2.2 of the Settlement Agreement and pursuant to the authorization granted in section 7 of the Zuni Indian Tribe Water Rights Settlement Act of 2003 ("the Act"), hereby waives and releases claims against the State of Arizona, or any agency or political subdivision of the State of Arizona, or any other person, entity, corporation, or municipal corporation, under Federal, State, or other law for:

- A. All past and present claims, including natural resource damage claims under CERCLA (as CERCLA is defined in the Settlement Agreement), the Oil Pollution Act (as that Act is defined in the Settlement Agreement), or any other applicable statute, for injury to water quality accruing from time immemorial through the Enforcement Date for lands within the LCR basin;
- B. The right to request that the United States bring any past and present claims for injuries to water quality under the natural resource damage provisions of CERCLA, the Oil Pollution Act, or any other applicable statute, for lands within the LCR basin accruing from time immemorial through the Enforcement Date;
- C. All future claims, including natural resource damage claims under CERCLA, the Oil Pollution Act, or any other applicable statute, for injury or threat of injury to water quality accruing after the Enforcement Date, for any lands within the Eastern LCR basin (as that term is defined in the Settlement Agreement) caused by:
 - (1) The lawful diversion or use of surface water;
 - (2) The lawful withdrawal or use of underground water, except within the Zuni Protection Area as provided in Article 5 of the Settlement Agreement;
 - (3) The Parties' performance of any obligations under the Settlement Agreement;
 - (4) The discharge of oil (as oil is defined in the Settlement Agreement) associated with routine physical or mechanical maintenance of wells or diversion structures not inconsistent with applicable law;
 - (5) The discharge of oil associated with routine start-up and operation of well pumps not inconsistent with applicable law; or

- (6) Any combination of the causes described in subparagraphs (1) through (5);
 - D. The right to request that the United States bring any future claims for injuries or threat of injury to water quality under the natural resource damage provisions of CERCLA, the Oil Pollution Act, or any other applicable statute, accruing after the Enforcement Date, for any lands within the Eastern LCR basin, caused by:
 - (1) The lawful diversion or use of surface water;
 - (2) The lawful withdrawal or use of underground water, except within the Zuni Protection Area as provided in Article 5 of the Settlement Agreement;
 - (3) The Parties' performance of any obligations under the Settlement Agreement;
 - (4) The discharge of oil associated with routine physical or mechanical maintenance of wells or diversion structures not inconsistent with applicable law;
 - (5) The discharge of oil associated with routine start-up and operation of well pumps not inconsistent with applicable law; or
 - (6) Any combination of the causes described in subparagraphs (1) through (5); and
 - E. All claims of interference with the trust responsibility of the United States to the Zuni Tribe arising out of the negotiation of the Settlement Agreement or the Act.
- 2. Notwithstanding the execution by the Tribe of this Waiver and Release of Claims, the Zuni Tribe shall retain the right to assert, as provided in subparagraph 11.4.A of the Settlement Agreement, the following claims:
 - A. Claims for breach or enforcement of the terms of this Settlement Agreement or of rights recognized in this Settlement Agreement or in the Act, including claims for future injuries to such rights.
 - B. Claims for injuries to surface water, groundwater and water quality as provided in Article 5 of the Settlement Agreement; and
 - C. Claims for future injuries to water quality, as described below:
 - (1) Claims accruing after the Enforcement Date for injuries to water quality that are not waived in subparagraphs 1.C and D;
 - (2) Except as provided in subparagraphs 1.C(4) and (5), and 1.D(4) and (5), claims for injuries to water quality accruing after the Enforcement

Date against any person or entity that is responsible for initially disposing of or initially releasing a Hazardous Substance (as Hazardous Substance is defined in the Settlement Agreement) or oil, even if the migration of that Hazardous Substance or oil to lands owned by or for the Zuni Tribe is caused by that person's or entity's lawful diversion of surface water or lawful withdrawal of underground water;

- (3) Notwithstanding subparagraphs 1.C and D, claims accruing at least 30 years after the Enforcement Date under CERCLA for injuries to water quality caused by release of a Hazardous Substance, and the right to request that the United States bring such claims solely on its behalf; and
- (4) Notwithstanding subparagraphs 1.C and D, claims accruing at least 30 years after the Enforcement Date under the Oil Pollution Act for injuries to water quality caused by the discharge of oil, except for claims for injuries caused by the discharge of oil associated with routine physical or mechanical maintenance of wells or diversion structures and the discharge of oil associated with routine start-up and operation of well pumps not inconsistent with applicable law, and the right to request that the United States bring such claims solely on its behalf.

3. Nothing in this Waiver and Release of Claims quantifies or otherwise affects the water rights, claims, or entitlements to water for federal lands of federal agencies, or of any Indian tribe, band, or community, other than the Zuni Tribe. Furthermore, nothing in this Waiver and Release of Claims waives the ability of any federal agency, Indian tribe, band or community, or the United States on their behalf, to enforce or otherwise protect those water rights, claims or entitlements to the extent permitted by law. The Zuni Tribe retains all claims of injuries to water quality against any other Indian tribe, band or community or against the United States on behalf of any such tribe, band or community.

4. Except as provided in paragraph 1, nothing in this Waiver and Release of Claims affects any right of the United States or the State of Arizona to take any actions, including enforcement actions, under any laws (including regulations) relating to human health, safety and the environment.

5. For purposes of this Waiver and Release of Claims, a claim or cause of action accrues when any party knows or reasonably should know that it has been damaged, unless another statutory standard applies.

6. Nothing in this Waiver and Release of Claims prevents the Zuni Tribe from participating with other entities in further activities to augment the water supply available to the LCR basin.

7. This Waiver and Release of Claims becomes effective and enforceable on the Enforcement Date.

DATED THIS 8th DAY OF July, 2004.

THE ZUNI INDIAN TRIBE

By: 